

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

MARY BRECKINRIDGE ARH HOSPITAL

and

Case 09-CA-216936

**UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL
AND SERVICE WORKERS INTERNATIONAL UNION
AFL-CIO/CLC**

MOTION TO POSTPONE HEARING

ARH Mary Breckinridge Health Services, Inc. (incorrectly referred to in the Complaint and Notice of Hearing as “Mary Breckinridge ARH Hospital”; hereafter “ARH Mary Breckinridge”), by counsel, hereby requests postponement of the hearing in this unfair labor practice case, which currently is scheduled to begin on Tuesday, March 19, 2019, in Jackson, Kentucky. In support of this Motion, ARH Mary Breckinridge states the following:

1. The Complaint and Notice of Hearing in this matter was not issued until Wednesday, February 27, 2019. Counsel for ARH Mary Breckinridge was unaware until advised unofficially on Monday, February 25, 2019, that the matter had been scheduled for a hearing on March 19, 2019. Because of other cases in which counsel for ARH Mary Breckinridge currently is involved, the late issuance of the Complaint and Notice of Hearing, and the relatively brief period of time between the date of notice of the scheduled hearing date and the actual hearing date itself, significant scheduling conflicts are created for counsel for ARH Mary Breckinridge, and very little opportunity is available for the proper preparation of necessary witnesses and a full defense in this matter.

2. Appalachian Regional Healthcare, Inc. (“ARH”), which owns ARH Mary Breckinridge, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (“USW”), currently are engaged in contract negotiations for a successor agreement to a collective bargaining agreement that expires at midnight on March 31, 2019. The said collective bargaining agreement covers approximately 2,200 non-professional bargaining unit employees at nine (9) hospitals and allied health facilities located in Eastern Kentucky and Western West Virginia. The lead negotiator for ARH, Christopher A. Johnson, Vice President-Human Resources, will be an essential witness for ARH Mary Breckinridge in this matter. Based upon information and belief, Roger McGinnis, International Representative, USW, is the lead negotiator for USW in the said negotiations, and likely will be a witness in any hearing in the subject unfair labor practice case. I am advised by Mr. Johnson that ARH and USW have agreed to reserve the entire work weeks of March 11-15, 18-22, and 25-29, for contract negotiations. Additionally, Mr. Johnson is unavailable the balance of this week due to a death in his immediate family this morning that requires his presence in Indianapolis, Indiana. Consequently, the availability of Mr. Johnson to prepare for and appear at the scheduled hearing on March 19, 2019, is extremely problematic, at best.

3. The availability of other necessary witnesses for ARH Mary Breckinridge for any hearing in this matter currently is unknown to counsel for ARH Mary Breckinridge. In this connection, three individuals employed by either ARH Mary Breckinridge or ARH are named in the complaint (Julia Asher, Connie Hubbard, and Deanna Lewis), and likely will be called as witnesses in any hearing in this matter. Counsel for ARH Mary Breckinridge notes that the availability of Ms. Lewis to prepare for and appear at the scheduled hearing on March 19, 2019,

is equally problematic to that of Mr. Johnson because Ms. Lewis is a participant in the current contract negotiations between ARH and USW.

4. The unfair labor practice charge in this matter is one of a number of integrally and directly related unfair labor practice charges (Case Nos. 09-CA-216861, 09-CA-216936 (a companion unfair labor practice charge to the charge in this matter) and 09-CA-217499) filed by USW and dismissed by the Regional Director for Region 9 of the National Labor Relations Board (“NLRB”) on December 11, 2018. The dismissals of these unfair labor practice cases currently are on appeal by USW before the General Counsel of the NLRB through the Office of Appeals. The response by ARH Mary Breckinridge to the appeals of USW is not due to be filed with the Office of Appeals until Friday, March 8, 2019. Given the pendency of the USW appeals, to proceed with a hearing in this matter on March 19, 2019, could result in piecemeal litigation of these unfair labor practice cases and an unnecessary waste of the resources of all parties involved.

5. Counsel for ARH Mary Breckinridge has spoken with all counsel for USW, Maneesh Sharma, Associate General Counsel, USW, and Alton D. Priddy and Chelsea N. Dermody, Priddy, Cutler, Naake & Meade, PLLC, and they each advise that they have no objection to postponement of the hearing. Additionally, counsel for the General Counsel, Erik P. Brinker, has advised Mr. Sharma and counsel for ARH Mary Breckinridge this date that Region 9 will not take a position on any motion for a postponement of the hearing in this matter during the pendency of the appeals in Case Nos. 09-CA-216861, 09-CA-216936, and 09-CA-217499.

6. Counsel for the General Counsel has advised Mr. Sharma and counsel for ARH Mary Breckinridge further this date that a post-complaint informal settlement agreement in Case No. 09-CA-216936 addressing the alleged unfair labor practice in this matter will be sent to

the parties this afternoon. The forthcoming informal settlement agreement, which has been a subject of discussion between Region 9 and counsel for ARH Mary Breckinridge since approximately December 2018, could lead to settlement of the complaint.

Therefore, ARH Mary Breckinridge requests that the hearing in this matter be moved to a date following final resolution of the pending appeals of the related unfair labor practice cases, which hearing date also permits adequate opportunity for the parties to prepare their respective witnesses, evidence, and arguments on the allegations of the complaint.

Dated: March 5, 2019

Respectfully submitted,

SMITH & SMITH ATTORNEYS

/s/ W. Kevin Smith
W. Kevin Smith
400 North, First Trust Centre
200 South Fifth Street
Louisville, Kentucky 40202
Ph: (502) 587-0761; Fax: (502) 589-5345
wks@smithandsmithattorneys.com

Attorneys for Respondent
ARH Mary Breckinridge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Motion to Postpone Hearing* was filed electronically with the Division of Judges of the National Labor Relations Board using the Board's E-File system, and with copies served by electronic message, on March 5, 2019, upon:

Maneesh Sharma, Esq.
Associate General Counsel
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial
and Service Workers International Union,
AFL-CIO-CLC
60 Blvd of The Allies
Room 807
Pittsburgh, PA 15222
msharma@usw.org

Chelsea N. Dermody, Esq.
Alton D. Priddy, Esq.
Priddy, Cutler, Naake & Meade, PLLC
2303 River Road
Suite 300
Louisville, KY 40206
cdermody@pcnmlaw.com
apriddy@pcnmlaw.com

Christopher A. Johnson
Vice President-Human Resources
Appalachian Regional Healthcare, Inc.
101 Airport Gardens Road
Hazard, KY 41701
[cajohnson@arh.org](mailto:cjohnson@arh.org)

/s/ W. Kevin Smith
W. Kevin Smith